



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 01, 2022

IN THE MATTER OF:

Appeal Board No. 624590

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective February 17, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to February 17, 2022, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed June 23, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statements submitted by the claimant and on behalf of the employer.

Our review of the record reveals that the case should be remanded to hold a further hearing. The Judge did not offer the employer an opportunity to produce the first-hand witness. The Board has determined to afford the employer such an opportunity.

At the further hearing, Ms. Dana Ledgerwood will offer testimony, via telephone, and by subpoena, if necessary, as to the events which transpired on February 11, 2022. The employer and the claimant will be afforded an opportunity for direct and cross examination.

After opportunities for confrontation and comment, any additional documentary evidence shall be entered into evidence, including any intake forms completed by the claimant or the client in advance of the massage on February 11, 2022, any client satisfaction surveys completed as to February 11, 2022, as to the claimant's massage, and the client's statement offered by the employer on appeal.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue ONLY, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER